

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FRANK W. DEARSTYNE,

Petitioner,

v.

**9:04-CV-741
(FJS/VEB)**

**WILLIAM MAZZUCA, Superintendent,
Fishkill Correctional Facility,**

Respondent.

APPEARANCES

KELLEY, DRYE & WARREN LLP
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Attorneys for Petitioner

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PUBLIC DEFENDER**
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Attorneys for Petitioner

**OFFICE OF THE NEW YORK
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120 Broadway
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Attorneys for Respondent

SCULLIN, Senior Judge

OF COUNSEL

JAMES V. O'GARA, ESQ.

LISA A. PEEBLES, FPD

**PAUL B. LYONS, AAG
ALYSON J. GILL, AAG**

ORDER

On August 21, 2015, this Court entered judgment, denying and dismissing Petitioner's amended petition in its entirety. *See* Dkt. No. 128. Petitioner appealed that judgment and, on March 7, 2017, the Second Circuit issued its mandate, affirming in part and reversing in part this

Court's judgment. *See* Dkt. No. 132.

In conformance with the Second Circuit's mandate, the Court hereby

ORDERS that Petitioner's amended petition for a writ of habeas corpus is **conditionally GRANTED** and Petitioner is **released from parole** unless a New York court adjudicates the voluntariness of Petitioner's confession within ninety (90) days of the date on which the Second Circuit issued its mandate; and the Court further

ORDERS that Respondent shall file with the Court and serve on opposing counsel a copy of the New York court's decision, if any, regarding the voluntariness of Petitioner's confession within five (5) days of the date of that decision and, in no event, later than ninety-five (95) days after the date on which the Second Circuit issued its mandate; and the Court further

ORDERS that, if the New York court's adjudication of the voluntariness of Petitioner's confession results in a determination that Petitioner is entitled to a new trial, a new trial **must be held within 180 days** of the date on which the Second Circuit issued its mandate; and the Court further

ORDERS that Respondent shall file with the Court and serve on opposing counsel a status report, indicating the date scheduled for any such trial; and, at the conclusion of any such trial, shall file with the Court and serve on opposing counsel a letter brief setting forth the results of said trial; and the Court further

ORDERS that the Clerk of the Court shall enter an **AMENDED JUDGMENT** consistent with this Order and the Second Circuit's mandate; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 8, 2017
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge